

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

Cause No. 15-4268 JB

v.

ANGEL DELEON,
JOE GALLEGOS,
EDWARD TROUP,
BILLY GARCIA,
ALLEN PATTERSON,
CHRISTOPHER CHAVEZ,
ARTURO ARNULFO GARCIA,
MARIO RODRIGUEZ,
MAURICIO VARELA
DANIEL SANCHEZ,
CONRAD VILLEGAS,
ANTHONY RAY BACA,
CHRISTOPHER GARCIA,
CARLOS HERRERA,
RUDY PEREZ,
ANDREW GALLEGOS,
SHAUNA GUTIERREZ, AND
BRANDY RODRIGUEZ.

Defendants.

**MOTION FOR JAMES HEARING AND DETERMINATION OF CO-CONSPIRATOR
STATEMENTS ADMISSIBILITY AT A PRE-TRIAL HEARING**

Defendants request that this Court hold a pre-trial hearing, pursuant to United States v. James, 590 F.2d 575, 581-582 (5th Cir. 1979). As to As grounds, counsel states:

I. Factual Background

On February 27, 2016, Shauna Gutierrez, Brandi Rodriguez, Santos Gonzalez and Paul "Oso" Rivera drove to 6515 Sunflower, Belen New Mexico, the home of Charlene Par-

ker-Johnson. The versions of what transpires next depends on which differing versions from each declarant, however, individuals enter the house, and a melee ensues. Paul Rivera in [Doc. 877] states that “J.G. was assaulted” ...”to prevent J.G. from testifying or cooperating with law enforcement. I committed these crimes by virtue of my membership in the SNM.” There are other statements that allude to the same facts, but from different parties. J.G. left the house with a large laceration on his head. He ran to another residence where the police were called. Ultimately J.G. was treated for his injuries.

Mr. Joe Gallegos, Shauna Gutierrez, Brandi Rodriguez, Santos Gonzalez and Paul “Oso” Rivera are all charged by way of the Second Superseding Indictment in Cause No. 15-4268-JB. Paul Rivera has entered a plea of guilty to Counts 14 and 15 on February 1, 2017.

The Indictment that includes Counts 14-16 has been split into two trials and the severed Counts 1-5 and 13-16 currently include acts that span 15 years, three (3) murders and two different alleged attempts to kill J.G.

II. The Law

Mr. Joe Gallegos and other defendants who have joined this motion request that this Court determine whether a conspiracy exists, the alleged statements were made by a co-conspirator to further the purpose of the conspiracy and that the statement(s) are sufficiently linked to the conspiracy at a hearing prior to trial in order to avoid undue delay in the trial proceedings and to avoid prejudice to the defendants.

a. F.R.E. § 801(D)(2)(E)

Federal Rules of Evidence 801(d)(2)(E) states that a “statement by a coconspirator of a party during the course and in furtherance of the conspiracy” is not to be considered hearsay.

Statements that do not fall within this narrow definition would be hearsay and inadmissible absent some other exception. Further statements that are purported to come from non-testifying witnesses would violate a defendant's ability to confront and cross-examine the witnesses against him. *Crawford v. Washington*, 451 U.S. 36 (2004).

b. 10th Circuit Recognizes Pre-trial determination.

The 10th Circuit has expressed a “strong preference” that determinations of the admissibility of a co-conspirator's statements be made in advance of trial outside the presence of the jury. *See United States v. Urena*, 27 F.3d 1487, 1491 (10th Cir. 1994). This determination would enable a Court to determine whether the government can meet its burden under F.R.E. §801. This is a preferred manner of conducting the determination, than “provisionally” admitting the evidence and finding out later in the trial that the evidence does not meet the requirements necessary to make the hearsay admissible. *See Urena*, 27 F.3d at 1491; *United States v. James*, 590 F.2d 575, 581-582 (5th Cir. 1979). The Government must present, outside the hearing of the jury, sufficient evidence to corroborate the out of court “hearsay” statements that it intends to offer under the federal rules of evidence such that a court can determine that the statements are not inadmissible hearsay. It also affords the court to determine whether the statements were made during and in furtherance of the conspiracy.¹

III. “We want Joe”²

The defendants file this motion after having received an enormous amount of discovery. This abundance of discovery has made several facts clear. The first is that the actions that are

¹ Defendant incorporates by reference the law that is set forth in Docs. 1228, 1292 and 1303 on this matter.

² The agents interviewing Paul Rivera at 35:25 in the audio recording state that “We want Joe”.

alleged to have been conducted by Joe Lawrence Gallegos, were to benefit no one or group other than Joe Gallegos.³ Paul Rivera is not a member of Sindicato Nuevo Mexico (SNM).⁴ In the recorded statement Paul Rivera states that Joe Gallegos was an ESL and did not mention that he was a member of SNM.⁵ Paul Rivera states on the recording that Brandi and Shauna are being chastised and yelled at by Joe Gallegos about his problems with J.G.⁶

Because these statements do not support the allegations in the Indictment, the defendants request that the Court hold a pre-trial hearing to determine if the alleged attack on J.G. was part of a conspiracy on behalf of the SNM that invokes the jurisdiction of this Court as well as what statements, if any, were made during the course or in the furtherance of the conspiracy as required by FRE 802(d)(2)(E).⁷

The defendants request that *United States v. Urea*, 27 F.3d 1487, 1491 (10th Cir. 1994) this Court conduct a pre-trial hearing and require what statements the Government plans to seek to introduce into evidence and produce evidence as to how the statements relate to the SNM conspiracy.

In order to make efficient use of the Court's time, the Defendants would request that the Government identify all statements that it intends to offer into evidence in advance of any hearing on the matter to will promote the efficient preparation use of time by both parties.

³ No reference is made in the audio to the acts being "for the benefit" of or "advancement of" the SNM.

⁴ Paul Rivera Redacted Interview at 20:00. and at 13:00 minutes where he says he's a "junkie" and therefore cannot be an SNM member.

⁵ *Id.* At 1:37 the agents ask and Paul agrees the "Joe is also with the SNM" There is no follow up on this statement by the Paul or the agents.

⁶ See Affidavit of Paula Sanchez stating that there are no incriminating statements on the audio calls based on her experience and review of the discovery.

⁷ See Affidavit of Paula Sanchez.

IV. Exclusion of Statements of Non-Testifying Defendant Santos Gonzalez

The defendants would request that the Court inquire of the Government what if any statements that it intends to offer from Defendant Santos Gonzalez. Defendant Santos Gonzalez has pled guilty to Counts 14, 15 and 16 of the Second Superceding Indictment. [Doc. 1180] Defendant, Gonzalez, is not expected to testify, however, reports of investigation and other materials produced purport contained references to statements he is alleged to have made that the Government may seek to introduce into evidence. The Defendants would request that these statements be identified by Bates number and that the Court construe those statements in the manner requested by Billy Garcia's Motion to Prevent the Admission of Statements of Non-Testifying Codefendants Implicating Defendant Billy Garcia and For an Order for the Government to Specify Such Statements Prior to Trial. [Doc. 1307]. Production of statements in advance of trial will help insure that the trial is fair and appropriately expedited by allowing the defendants to identify and determine admissibility *James* statements without interrupting the proceedings.

Consultation

Given the stance the Government has taken in similar requests and motions , concurrence wasn't sought from the government pursuant to D.N.M.LR-Cr 47.1.

Respectfully Submitted,

/s/ Brock Benjamin

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 13th day of October, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and service to all CM/ECF registrants.

/s/ Brock Benjamin
BROCK BENJAMIN

AFFIDAVIT

STATE OF NEW MEXICO

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COUNTY OF BERNALILLO

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BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared **Paula Sanchez-Knudsen**, known to me to be a credible person over the age of 18 and who, after having been by me first duly sworn, stated and deposed upon oath as follows, to-wit:

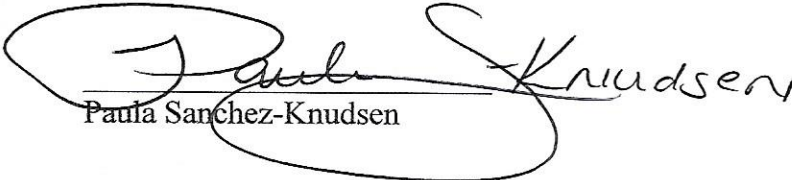
I am a retired Sergeant from the Bernalillo County Sheriff's Department and was certified as a law enforcement officer for the State of New Mexico. I was employed with the Bernalillo County Sheriff's Department as a law enforcement cadet/officer from April 2001 until my retirement in August 2016. During my tenure at the Sheriff's Department, I was assigned and received experience in the following: field services, Crimes Against Children Unit, Task Force Officer for the Drug Enforcement Agency, Drill Instructor Class 28, Internal Affairs, District Court, and Commission on Accreditation for Law Enforcement Agencies. I have investigative experience in a wide range of areas to include, crimes against children (abuse -physical, verbal, sexual), drug enforcement, administrative investigations, and national accreditation of the Department. Prior to my time as a law enforcement cadet/deputy, I was employed with the City of Albuquerque as a Human Resource Testing Analyst from July 2000-April 2001. I was also employed with the Bernalillo County Sheriff's Department as a Crime Analyst from August 1998-February 2000. I was also employed with the Second Judicial District Attorney's Office as a screener/administrative aid for the Property/Narcotics Division under the HIDTA Grant from July 1995 until August 1998. I acquired both my Masters of Public Administration with certificates in Budgeting and Personnel and my B.A. of Criminal Justice from the University of New Mexico.

I have been appointed as an investigator in the United States v. DeLeon, In Cause No. 15-CR-4268 in the District of New Mexico. As part of my appointment in this matter I have reviewed the discovery that has been produced.


I have reviewed the audio file titled "Redacted Audio of Interview of P. Rivera on 5-18-16." This is a recording with a length of 2:07:55. Paul Rivera represents that Joe Gallegos is a "scary guy" who can fight. He does not identify that Joe Gallegos has done any actions for the benefit of the SNM. Further, he states that he was part of the attack on February 27, 2016. The material fact in the way that he represented this, is that he maintained that it was for the benefit of Joe Gallegos. Paul Rivera did not refer to the SNM during the entire course of his description of the attack on J.G and does not represent that it was for the benefit of SNM. Paul Rivera identifies Joe Gallegos as the head of the East Side Locos (ESL) at approximately 20 minutes into the interview. Paul also states that J.G. has problems with the ESL. Paul does not mention that J.G. had any problems with the SNM. The audio is Paul Rivera's narrative of the events surrounding the attack on J.G. interspersed with comments by the Agents.

The agents ask Joe Gallegos' instructions for the attack on J.G. come from Joe Gallegos through phones or letters. Paul tells the investigators that the instructions came by both methods, though he has never been involved first hand. I have reviewed the audio recordings from Joe Gallegos jail calls that were produced in this discovery. I have not heard any reference to an attack on J.G. The one reference that I have heard about J.G. in the audio recordings is Shauna Gutierrez telling Joe that she and her son saw J.G. at a party and Joe told Shauna Gutierrez to leave J.G. alone.

The agent's interrogation tactics additionally are influential on the manner of the statement. At approximately 1:19:48 into the interview, an unknown agent tells Paul that he is about 90 percent there. He continues stating that he believes that Paul has been honest up and until Paul exited the vehicle. They then tell Paul that three others have made different stories than Paul has. They ask Paul to come clean with his story and cite how other stories are matching up and his is not.


Paula Sanchez-Knudsen

SWORN AND SUBSCRIBED BEFORE ME ON THIS 12TH DAY OF October 2017.


NOTARY PUBLIC



OFFICIAL SEAL
YOLANDA KRANTZ
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires 11-15-2020